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R.F., Appellant)	
)	
and)	Docket No. 22-0058
)	Issued: April 22, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Louisville, KY, Employer)	
)	

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On October 19, 2021 appellant, through counsel, filed a timely appeal from a September 20, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a left shoulder condition causally related to the accepted August 7, 2020 employment incident.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 11, 2020 appellant, then a 53-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 7, 2020 he injured his left shoulder while in the performance of duty. He explained that his left shoulder popped while he was delivering a package to a customer's porch. Appellant did not stop work.

In an August 17, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received a medical report dated August 13, 2020 by Dr. Robert L. Berlin, an occupational medicine specialist, who noted that appellant related complaints of pain in his left shoulder, which appellant attributed to reaching for a package in his vehicle while at work on August 5, 2020. He performed a physical examination of the left shoulder and documented pain, a mildly positive Speed's test, and reduced flexion, abduction, and rotation. Dr. Berlin diagnosed left shoulder strain, recommended physical therapy, and completed a duty status report (Form CA-17) outlining modified duty restrictions of no lifting, pulling, or pushing greater than 10 pounds and limited use of the left arm.

In an attending physician's report (Form CA-20) dated August 13, 2020, Dr. Berlin diagnosed left shoulder strain without rotator cuff tear and checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by an employment activity.

In an initial evaluation report dated August 17, 2020, Denise Whitman, a physical therapist, indicated that appellant related complaints of left shoulder pain, which he attributed to feeling a pop while reaching to grab a package on August 5, 2020. Physical therapy notes dated August 21 through 28, 2020 documented various therapeutic treatments.

In a follow-up report dated August 31, 2020, Dr. Berlin noted appellant's ongoing left shoulder complaints and examination findings. He recommended that appellant undergo magnetic resonance imaging (MRI) scan of the left shoulder.

In a report dated September 1, 2020, Dr. Berlin augmented appellant's work restrictions to no lifting, pushing, or pulling more than five pounds with the left arm.

By decision dated September 21, 2020, OWCP denied appellant's traumatic injury claim finding that the evidence of record was insufficient to establish that he sustained an injury in the performance of duty, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received additional evidence. A report of MRI scan of the left shoulder dated September 23, 2020 demonstrated mild supraspinatus tendinopathy with mild partial-thickness articular-sided fraying at the footplate, mild-to-moderate intra-articular long head biceps tendinopathy, mild subscapularis tendinopathy, prominent thickening of the glenohumeral joint capsule, and a partially visualized superior labrum anterior and posterior (SLAP) tear.

In a statement dated September 28, 2020, appellant indicated that on August 7, 2020 he felt a pop in his left shoulder while delivering a package on a porch, which caused him to drop the package. He indicated that he immediately felt a burning sensation in the front part of the left shoulder.

In a report dated September 25, 2020, Darin Coen, a physician assistant, noted that appellant continued to complain of pain and difficulty with reaching overhead and behind his back. He reviewed the left shoulder MRI scan and prescribed additional physical therapy and medication. Mr. Coen indicated that appellant may require an orthopedic consultation if his symptoms worsened.

A note dated October 2, 2020 by an unknown healthcare provider recommended that appellant remain off work pending an upcoming surgery on October 26, 2020.

On October 9, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In an operative report dated October 26, 2020, Dr. John Stuart Blankenship, an orthopedic surgeon, noted pre and postoperative diagnoses of left shoulder adhesive capsulitis, SLAP tear, and rotator cuff tear. He indicated that he performed left shoulder manipulation, arthroscopic lysis of adhesions, rotator cuff debridement, and subpectoral biceps tenodesis.

Appellant underwent additional physical therapy to the left shoulder from October 27, 2020 through January 15, 2021.

By decision dated January 22, 2021, OWCP's hearing representative denied modification of the September 21, 2020 decision.

OWCP continued to receive evidence. In an October 2, 2020 report, Dr. Blankenship noted that appellant related complaints of left shoulder pain which appellant attributed to an injury that he sustained while delivering a package on August 5, 2020. He performed an examination, reviewed the left shoulder MRI scan, and diagnosed left shoulder pain of unspecified chronicity and a SLAP tear, rotator cuff tear, and adhesive capsulitis of the left shoulder.

On July 14, 2021 appellant, through counsel, requested reconsideration. In support thereof, appellant submitted a June 20, 2021 statement, in which he explained that, on August 7, 2020 he reached behind his seat to retrieve a package before delivering it to a customer's porch and, while doing so, he felt a burning sensation as if he had overstretched the muscle in his shoulder. He related that he then walked up to the front porch and dropped the package off, at which point he felt a pop in his left shoulder and sharp pain.

By decision dated September 20, 2021, OWCP modified its prior decision to find that appellant had established the factual component of his claim. However, the claim remained denied as the medical evidence of record was insufficient to establish a causal relationship between his diagnosed left shoulder conditions and the accepted August 7, 2020 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA,³ that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.⁶

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁷ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted August 7, 2020 employment incident.

In a Form CA-20 dated August 13, 2020, Dr. Berlin diagnosed left shoulder strain and checked a box marked “Yes” indicating that appellant’s condition had been caused or aggravated by an employment activity. The Board has held that an opinion on causal relationship with an

³ *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

affirmative check mark, without more by way of medical rationale, is of diminished probative value.⁹ Thus, this evidence is insufficient to establish causal relationship.

In his reports dated August 13 and 31 and September 1, 2020, Dr. Berlin continued to diagnose left shoulder strain and noted that appellant related that he injured his left shoulder while delivering a package on August 5, 2020. He did not, however, provide an opinion on the issue of causal relationship. The Board has held that a medical report that does not offer an opinion on causal relationship is of no probative value and, thus, is insufficient to establish the claim.¹⁰ Therefore, Dr. Berlin's additional reports are also insufficient to establish causal relationship.

In his October 2, 2020 medical report, Dr. Blankenship noted that appellant related pain and difficulty with range of motion, which appellant attributed to delivering a package at work on August 5, 2020. In that report and in his subsequent October 26, 2020 operative note, he diagnosed left shoulder adhesive capsulitis, SLAP tear, and rotator cuff tear. However, Dr. Blankenship did not provide an opinion on the issue of causal relationship. As noted above, a report that does not provide an opinion on causal relationship is of no probative value.¹¹ Therefore, this evidence is insufficient to establish the claim.

The remaining medical evidence of record consists of physical therapy records and a note by a physician assistant. Certain healthcare providers such as physician assistants and physical therapists are not considered "physician[s]" as defined under FECA.¹² Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹³

As appellant has not submitted rationalized medical evidence establishing a causal relationship between his diagnosed left shoulder conditions and the accepted August 7, 2020 employment incident, the Board finds that he has not met his burden of proof to establish his claim.¹⁴

⁹ See *R.H.*, Docket No. 20-1684 (issued August 27, 2021); *C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁰ *T.D.*, Docket No. 19-1779 (issued March 9, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *Id.*

¹² Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); see also *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA); *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

¹³ *Id.*

¹⁴ See *J.T.*, Docket No. 18-1755 (issued April 4, 2019); *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted August 7, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 20, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 22, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board